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ARIZONA ATTORNEY GENERALJanuary 13, 1956
Opinion No. 56-24

REQUESTED BY: E. T. Williams, Jr.
State Treasurer

OPINION BY: ROBERT MORRISON, The Attorney General

QUESTION: May a Legislator's salary be garnisheed during the session of the Legislature?

CONCLUSION: No.

Article 4, Part 2, Section 6, of the Constitution, provides as follows:

"Members of the legislature shall be privileged from arrest in all cases except treason, felony, and breach of the peace, and they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session."

A.R.S. § 12-1601 reads as follows:

"The salaries of officers, deputies, clerks and employees of the state or its political subdivisions shall be subject to garnishment as provided in this article, and such garnishment shall not be construed as against public policy."

The case of Fuller vs. Barton, 208 N. W. 696, is the only case squarely on point which interprets a similar constitutional provision and a statutory provision authorizing garnishments. In that case, the Court held:

"The Legislature, by this act, undoubtedly authorizes garnishee proceedings against the state in certain cases, but subject to the foregoing constitutional provision. When the constitutional provision and the legislative act are read together, there is little difficulty in construing the law. But it is said that Mr. Culver does not come within the constitutional exception, because judgment had theretofore been obtained and the garnishee process was served upon the state. This is a too narrow view of the situation. The idea back of the constitutional provision was to protect the legislators from the trouble, worry, and inconvenience of court proceedings during the session, and for a certain time before and after, so that the state could have their undivided time and attention in public affairs. Mr. Culver,

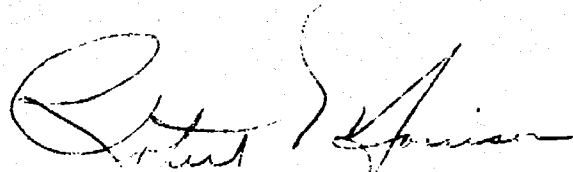
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as principal defendant, had the right to make a defense to the garnishee proceeding. In the present case the garnishee proceeding succeeded in doing just what the constitutional provision was created to avoid. It harrassed the legislator, drove him to make a defense in the garnishee proceeding, and deprived him of the means of subsistence pending the balance of the session. We think the case clearly comes within the constitutional inhibition."

It is my opinion that the Arizona constitutional provision prohibits garnishment proceedings, and, therefore, you should not honor any garnishments involving any legislator during the sessions of the Legislature.

Opinion No. 54-58-L is hereby overruled.



ROBERT MORRISON
The Attorney General

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